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VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

Interim report of the Ad Hoc Working Group of Experts on southern Africa prepared in accordance with Commission on Human Rights resolution 1993/9

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INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts on southern Africa

1. The Ad Hoc Working Group of Experts on southern Africa has been entrusted with the task of examining the situation regarding violations of human rights in South Africa since 1967, when it was first established under Commission on Human Rights resolution 2 (XXIII). The two-year mandate of the Group has been renewed regularly since then, and the Group has submitted reports every year to the Commission on Human Rights.

2. At its forty-ninth session, in resolution 1993/9 of 26 February 1993, the Commission on Human Rights renewed the mandate of the Ad Hoc Working Group for a further period of two years; this decision was approved by the Economic and Social Council in decision 1993/257 of 28 July 1993. The Commission requested the Working Group to continue to examine the situation regarding the violations of human rights in South Africa and to submit an interim and a final report to the Commission at its fiftieth and fifty-first sessions respectively, and preliminary reports to the General Assembly at its forty-eighth and forty-ninth sessions.

3. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman-Rapporteur; Mr. Felix Ermacora (Austria), Vice-Chairman; Mr. Armando Entralgo (Cuba); Mr. Elly-Elikunda Mtango (United Republic of Tanzania); Mr. Zoran Pajic (Bosnia and Herzegovina); Mr. Mulka Govinda Reddy (India).

4. In resolution 1993/9, the Commission renewed its request to the Government of South Africa to allow the Group to visit that country to gather information from individuals and organizations in order to ascertain the situation of human rights in South Africa. The Assistant Secretary-General for Human Rights, on 1 March 1993, addressed such a request to the Government of South Africa. A delegation of members of Parliament, who had had consultations with the Assistant Secretary-General at Geneva and who had expressed their interest in facilitating a visit by the Working Group, was also contacted.

5. In addition, the Chairman-Rapporteur of the Working Group addressed a letter dated 6 April 1993 to the Permanent Representative of South Africa to the United Nations Office at Geneva. The letter read as follows:

> "I have the honour to refer to Commission on Human Rights resolution 1993/9 which has renewed the mandate of the Ad Hoc Working Group of Experts on southern Africa for a further period of two years. Under paragraph 31 of the resolution, the Commission has again requested the Government of South Africa to allow the Working Group to visit your country to gather information from individuals and organizations in order to ascertain the situation of human rights in South Africa.

"In this context, I should like to refer to the communication of Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights, dated 1 March 1993, as well as several informal contracts which took place, and more specifically the discussion and the exchange of views which we had on 24 June 1992.

"The Working Group regrets very much the fact that a visit to your country was again not possible during 1992 but continues to hope that a visit as requested by the Commission on Human Rights would be authorized by your Government in the course of this year. Once again, I should like to stress the importance the Working Group attaches to a visit to South Africa in order to obtain as wide a range of testimonies and perspectives as possible, including those of your Government. In view of the possibility of resumption of CODESA II and the continuing bilateral talks for a negotiated constitutional settlement, a visit to your country during this year would be of particular importance.

"In this connection, I should like to advise you that the Working Group considers it necessary that the duration of the visit should be of approximately two weeks in order to fully examine the situation in all its aspects. Given the time constraints imposed by its reporting obligations, the Working Group would propose the period from 16 August 1993 to 27 August 1993".

6. On 5 November 1993, the Chairman-Rapporteur addressed a letter to the Secretary-General of the United Nations in which he requested the Secretary-General's intervention with the South African authorities in the hope that a visit, as envisaged, could take place. The Chairman-Rapporteur explained that the group had never been authorized by the Government of South Africa to visit that country in order to examine the situation of human rights in situ, in pursuance of the mandate conferred on it by the Commission on Human Rights, and that, in spite of informal contacts over a period of three years, no authorization was forthcoming. The Group therefore gathered evidence from the testimonies collected from witnesses who travelled from South Africa to the front-line States (Botswana and Zimbabwe), and from written information received through the secretariat at Geneva. The Group was aware of the shortcomings that could arise from collecting information without actually visiting the country, in spite of the very reliable and high-quality testimonies obtained. He further pointed out that the Government of South Africa did cooperate with other United Nations bodies and agencies such as the Special Committee against Apartheid and the International Labour Organisation, which were permitted to send their representatives to the country on many occasions.

B. Organization of work and working methods adopted by the Ad Hoc Working Group of Experts

7. Pursuant to its mandate and given the special situation prevailing in South Africa, the Group decided on the modalities of a fact-finding mission. With a view to collecting as much information as possible and gathering testimony on the evolution of the situation in South Africa since its last report (E/CN.4/1993/14), the Group heard witnesses at Gaborone from 16 to 19 August 1993 and at Harare from 20 to 27 August 1993.

8. In keeping with its normal practice, and within the framework of its mandate, the Group requested cooperation from the Member States concerned, liberation movements, intergovernmental and non-governmental organizations, as well as human rights organizations and individuals, in order to hear the greatest possible number of witnesses who might provide reliable information on the questions related to its mandate. The procedure followed and measures taken by the Group with respect to the organization of its fact-finding mission are described below.

9. In addition to the communication addressed to the Government of South Africa (see above) and the informal contacts established with the Permanent Representative of South Africa to the United Nations Office at Geneva, the Chairman-Rapporteur of the Working Group on 25 June 1993 addressed a letter to the Permanent Representatives of the Governments of Botswana and Zimbabwe, drawing attention to the group's mandate and activities and inviting their Governments to cooperate and render assistance to it in fulfilling its responsibilities. The Ad Hoc Working Group of Experts would like to express its deepest appreciation and thanks to the Governments of Botswana and Zimbabwe for the full cooperation it enjoyed.

10. In keeping with past practice, on 27 July 1993 the Chairman-Rapporteur of the Working Group apprised the Secretary-General of the Organization of African Unity, (OAU) of the Group's intention to hold hearings in the front-line States from 16 to 27 August 1993.

11. The Chairman-Rapporteur, by letter dated 27 July 1993, informed the Chairman of the Special Committee against Apartheid of the meetings scheduled to be held at Gaborone and Harare. The Working Group is grateful for the regular dispatch of documents from the Special Committee, but once again regrets the fact that no representative from the Committee could participate in the activities of the Working Group.

12. The Working Group welcomed the continued cooperation it has enjoyed with the International Labour Organisation (ILO). In order to follow up on the evolution of the situation in South Africa, the Group would welcome receiving information from ILO concerning any conferences, seminars or symposia it plans to hold.

13. On 15 July 1993, the Ad Hoc Working Group invited several non-governmental organizations and the main African liberation movements to appear before the Group. A number of individuals also appeared before the Group to testify in their personal capacity.

14. During its fact-finding meetings, the Ad Hoc Working Group held 16 meetings and heard 15 witnesses. In addition to the testimony of those who appeared before the Group, a large volume of documentation was transmitted by individuals and various legal, humanitarian and human rights organizations. The records of the testimony given in public sessions are on file with the secretariat of the Working Group.

15. The following witnesses were heard at public meetings:
Ms. Sally Ann Sealey - Independent Board of Inquiry into Informal Repression (861st meeting, Gaborone); Ms. Pat Sidley - Anti-Censorship Action Group

(862nd meeting, Gaborone); Ms. Shirley Mabusela - National Children's Rights Committee (863rd meeting, Gaborone); Mr. Seth Nthai - African National Congress (864th meeting, Gaborone), Ms. Safoora Sadek - Human Rights Commission of South Africa (866th and 867th meetings, Harare); Mr. Greg Nott - National Association of Democratic Lawyers (868th meeting, Harare); Mr. Indarin Govender - Lawyers for Human Rights and Ms. Lindiwe Ngwane - African National Congress (869th meeting, Harare); Ms. Ksomotso Moroka and Mr. Bulelani Ngcuka - African National Congress (870th meeting, Harare); Ms. Brenda Madumise - African National Congress and Dr. Takalani Madima - Centre for Applied Legal Studies, University of Witwatersrand, (871st meeting, Harare); and three representatives of the ILO (873rd meeting, Geneva), Mr. F. Muntambirwe, Mr. Auret Van Heerden and Mr. Lee Swepston.

C. Other activities of the Group during its mission

16. During its visit to Botswana, the Working Group was received in Gaborone on 19 August 1993 by Dr. G.T.K. Chiepe, Minister of Foreign Affairs. A substantial discussion and exchange of views took place during the course of this meeting. The topics covered, inter alia, were the breakdown in the constitutional negotiations, the continuing violence and the resumption of the bilateral negotiations between the different parties concerned.

D. Basic international norms affecting the questions within the Group's competence

17. In preparing its report, the Working Group took into consideration the basic international norms relating to its activities. It should be pointed out that all provisions contained in these norms prohibit any form of racial discrimination.

18. In the opinion of the Ad Hoc Working Group of Experts, the Universal Declaration of Human Rights represents the United Nations General Assembly's interpretation of the expression "human rights and fundamental freedoms" appearing in the passages quoted from the Charter of the United Nations. The Group reaffirmed that the obligations incumbent on Member States under those provisions of the Charter had been broadened by the more precise statement of rules contained in the Universal Declaration of Human Rights and in decisions of the International Court of Justice. It also stated that the provisions of the Universal Declaration should be recognized as formulating principles and setting international standards in the field of human rights under international law in view of the fact that they had been accepted by a very large number of States and international organizations.

19. Without prejudice to other provisions contained in international instruments, the Group took account of the resolutions adopted by the General Assembly at its forty-fifth session in so far as they related to its mandate, notably resolution 45/176 B, of 19 December 1990, on concerted and effective measures aimed at eradicating apartheid.

20. The Group met from 6 to 17 December 1993 at the United Nations Office at Geneva to consider and adopt the present report. The report is based principally on the information collected in the form of oral testimony, written communications from concerned organizations, official journals and

communications, documents of the United Nations and specialized agencies, as well as works dealing with questions directly related to its mandate. In addition, the Working Group also utilized relevant reports available from the local and international press.

E. General comments

21. Mr. Nelson Mandela and Mr. F.W. de Klerk were jointly awarded the 1993 Nobel Peace Prize at Oslo for their efforts to end the system of apartheid. The Working Group congratulates them and pays tribute to their continued efforts to achieve a negotiated and peaceful solution. It salutes especially Mr. Mandela, who has dedicated his whole life to this goal and spent more than 27 years in prison while continuing his struggle against the immense injustice of the system of apartheid.

I. RIGHT TO LIFE

A. Escalation of violence

22. The Working Group noted that the situation with respect to violence appeared to be encouraging in the initial months of this year as deaths and injuries had diminished considerably. However, the situation began to change soon after constitutional negotiations began. The death-toll rose, especially after the Multiparty Negotiating Forum decided that elections would take place on 27 April 1994, and it would appear that violence has continued to escalate. According to statistics published by the Human Rights Commission of South Africa, 554 deaths were recorded in August 1993 alone, the third highest figure recorded. It was reported that the average daily death rate came to 18 in August, which was more than double the average death rate for the previous three years. The representative of Human Rights Commission of South Africa informed the Working Group that 2,000 people had been killed in political and other violence during the first seven months of this year, and close to 3,000 had been injured. The witness said that in August 1992 the violence had shifted from the Pretoria/Witwatersrand/Vaal (PWV) area to the Natal region, but in recent months, it had returned to the PWV. According to the information submitted by the representative of the Human Rights Commission of South Africa, the deaths in the PWV area during July 1993 accounted for more than half the national death-toll. According to the same source, by 10 December 1993, a total of 4,047 deaths arising out of political violence had been reported.

23. The representative of the Independent Board of Inquiry into informal repression referred to the latest outbreak of violence in Katlehong, Thembisa, Daveyton and Thokoza, on the East Rand, and said that many areas in the East Rand had been declared "unrest areas". Despite the ongoing negotiations, repression at the formal and informal level had continued. Numerous people, including many youths, had been detained under section 3 of the unrest regulations, permitting detention for 30 days without charge. On 8 August 1993, 12 youths had been arrested in Thokoza township by members of the security forces in that area, where they were assaulted and tortured. She had been in contact with them just a few days before she testified, when they informed her of their treatment. They remained incarcerated, the witness said, as they were unable to give the information demanded of them, i.e. the

whereabouts of firearms in Thokoza township. The witness referred to several other incidents and stated that those who were taken into custody were systematically tortured by the South African Police (SAP), regardless of whether they were detained for a criminal or a political offence. She described different situations in which her organization had assisted victims and said that it was rare to obtain a conviction against the members of the SAP, even when their conduct amounted to serious breaches of the law.

24. Referring to the raid on the World Trade Centre, where the negotiations were taking place, on 25 June 1993, the same witness said that the white right wing posed a threat to the elections scheduled for April 1994 - an important matter to be monitored. This was one of the difficulties arising out of the fact that the Freedom Alliance did not participate in the final stages of the negotiations. The Afrikaner Weerstandsbeweging (AWB), and especially the Afrikaner Volks Front was causing some concern to all the participants in the negotiations because, although it was small in number, members were reportedly heavily armed and well trained in the use of arms. According to the ICJ report "Voting for Peace", published in November 1993, the KwaZulu Legislative Assembly announced on 5 November 1993 that right-wingers had begun training about 500 men for "self-protection units" in Natal.

25. The representative of Lawyers for Human Rights stated that the security forces implicated in violence in Natal were said to be mainly the Internal Stability Unit (ISD) and the KwaZulu Police (KZP), which were instrumental in stirring up conflict in that region. The same witness also referred to the "Yankee Unit" in the Val subregion, which was implicated in intimidation, assaults and killings of activists. He further stated that the unit had been disbanded in July 1993. However, the members of the unit, including its head, had not been suspended, but transferred to other SAP units. According to information received by the Working Group, disbanded Buffalo Battalions 31 and 32, which consisted of members recruited from Angola and northern Namibia, had redeployed within the security forces of South Africa instead of being confined to barracks. This allowed them to continue to participate in and foment violence in the townships.

26. According to "Voting for Peace", the situation in Thokoza, Katlehong and Phola Park had deteriorated seriously: the ICU representatives had to travel in an armoured vehicle of the Peace Committee while in Thokoza, whereas, during their mission in March 1992, it had been possible to walk there. On the other hand, the situation in Sebokeng and Sharpville appeared to be calm. (The ICJ team was informed that it was "the calm before the storm", a warning which they took seriously because on previous visits, when such fears were expressed, they were followed shortly by outbreaks of violence, as was the case, for example, in the Boipatong massacre of 17 June 1992 (see E/CN.4/1993/14, paras. 78-103)).

27. The same report also refers to witnesses who claimed that they were attacked at a COSATU rally at the stadium in Sundumbili on 26 September 1993 by people in KZP uniforms. The witnesses, ANC supporters, felt they would be unable to vote at Sundumbili because they feared the KZP (and not the local Inkatha Freedom Party (IFP) members). Conversely, the report states, it

would be necessary to allay the fears of IFP members to enable them to vote in places like Bruntville, Richmond and Wembezi, which were allegedly not Inkatha strongholds.

28. According to information received by the Working Group, it is a widely held view that a major part of the current violence is closely connected with political intolerance. In order to ensure the correct political atmosphere for free and fair elections, legitimate political activity and political campaigns must be allowed to take place in all parts of South Africa.

29. It was widely reported that in October 1993 five youths, aged 12 to 19 years, were killed in their sleep in Umtata (Transkei) by South African Defence Forces (SADF) when they raided a house allegedly belonging to the Azania People's Liberation Army, which is the military wing of PAC. General George Meiring, army Chief of Staff, is reported to have said that the youths were shot when they brandished weapons at an army strike force that entered the house.

30. The ICJ report stresses the need for a change in the negative perception of the role of the police; they needed to be seen as protecting the public and bringing before the courts those who break the law. According to information given by the Commissioner of Police to the ICJ team, during the first 8 months of 1993 there were 3,460 attacks on the South African Police, 130 policemen were murdered and there were 323 attacks in which homes of policemen were damaged. The Working Group considers that the lack of confidence in the SAP has resulted in this kind of violence.

31. As a result of extensive discussions between ANC and SAP in Natal, arising out of allegations of torture by SAP at Mooi River made during the Goldstone Commission inquiry, proposals were made for the establishment of a local investigation unit. The ICJ report states that the proposals also included selection of policemen by an independent panel and public accountability through the Attorney-General and the Police Reporting Officer under the Goldstone investigation team. The proposals were shelved by the Commissioner of Police because he felt they would not be necessary after the introduction of a scheme which was to be enforced under the Security Forces Inquiry Board Act. However, it was noted in the report that the Act had never come into force.

32. Extensive testimony was received from the representative of Lawyers for Human Rights which was associated with the programme of violence monitoring and witness protection. The programme, he said, was started in early 1992 in the wake of escalating violence, and was intended to contribute towards the curbing of violence by providing protection to individuals who agreed to give information about incidents of violence in which they were involved. The programme also dealt with ways in which existing peace initiatives could be strengthened. Referring to the situation in July 1993 when there were 4 major massacres in the country, he said that 650 people were reported to have been killed due to politically motivated attacks and that over half of them had lost their lives after the announcement of the tentative election date. The witness stated that throughout the cumbersome negotiation process, every significant breakthrough at the World Trade Centre was met with an immediate escalation of violence. The existing peace efforts had not managed to curb

the levels of violence because of the crisis in the credibility of the security forces, the lack of other credible State structures to facilitate community cooperation, the total reliance of the National Peace Accord (NPA) on the existing forces to intervene in situations of conflict and the deepening socio-economic crisis within the country. It was this assessment which had led the Lawyers for Human Rights to believe that a multi-pronged strategy was needed to normalize the political climate in South Africa.

33. The witness claimed that the assassinations of Anton Lubowski and David Webster were attempts to eliminate those who were gathering information on illegal political activities by certain State and State-linked structures. In contrast, the assassinations of Griffiths Mxenge, Mathew Goniwe and other prominent community activists during the mid-1980s had been designed to weaken the organizational capacity of grass-roots organizations during that highly volatile period. The assassinations of Chris Hani and Reggie Hadebe indicated that those actively involved in peace initiatives were also targeted; the life of the head of the National Peace Desk of the African National Congress, Mr. Sidney Mofomadi, had recently been threatened.

34. Referring to the establishment of self-defence units in many communities, the witness said that their goals were not fully realized because of, inter alia, a lack of clear accountability, proper training in peace-keeping, a lack of transparency and a lack of material resources. He also stated that the situation was exacerbated because the self-defence units came under concerted attacks and intimidation by the security forces.

35. The witness said that the experience of his organization in monitoring police investigation revealed that the police were not trusted by potential witnesses and by the communities, which resulted in unsuccessful prosecutions. The witness cited as examples the cases of the Swanieville and Boipatong massacres. In the former, four different officers headed the investigations and all the confessions made to the police by the seven accused were rejected by the courts. The witness claimed that the quality of police investigation could improve only if the broader issues of credibility and accountability of the South African Police were addressed.

36. Many witnesses stated that the lack of confidence in the judicial system of South Africa resulted in black people resorting to peoples courts.

37. The crisis in South African Police investigations was rooted in the fact that, after crimes were committed, critical evidence was often lost. The witness suggested that investigations would undoubtedly improve when proper police relations with the community were established and a more professional attitude by the police was adopted.

38. Even more disturbing, the witness continued, was the fact that only 7 individuals were charged for a massacre allegedly committed by over 1,000 residents of the Kagizo hostel in Swanieville. He referred to the statement made by the presiding judge who was reported to have referred to the failure to bring more people to trial as a "scandal". It was further stated by the witness that the police could not secure reliable witnesses from the community and weapons could not be linked to individuals due to the manner in which the police handled the situation immediately after the massacres. The

witness further referred to the judge's criticism of the handling by police of video material of the attackers. In addition, the witness recalled that the police had failed to give adequate reasons for the presence of police vehicles in Swanieville just before the massacre took place.

39. Referring to the police response before, during and after the Boipatong massacre, the witness reported that there were serious omissions and gross inefficiencies, as pointed out by Dr. Waddington, which were, inter alia, insufficient contingency plans (only 2 vehicles and 20 men were on duty that night, and only 1 detective was present to investigate). Furthermore, witnesses failed to come forth and adequate records of the investigations were not kept. Because of the lack of a positive response to the recommendations in the Waddington report, the witness said, the perpetrators of the violence went unpunished and continued with their criminal activities.

40. The witness also said that the relationship of the police with the communities must be based on a genuine and fundamental change in the attitude, style and composition of the South African Police. While a change in the composition would correctly be viewed as a long-term objective, the attitude and style of the South African Police must begin to change immediately. He further said that in order to get cooperation from the communities, it would be necessary to ensure joint structures, involving the African National Congress, the Pan Africanist Congress, etc., which were accountable and transparent. The witness stressed that there was a need for such a development to take place in good faith and at the local level, and that it should be seen as a process rather than an event.

41. He also stated that his organization strongly supported the setting up of subcouncils under the Transitional Executive Council; whether or not these subcouncils had executive or advisory powers, the composition and command structure of the joint security forces would not be seriously affected in the short term. The witness suggested that effective joint control would be a practical impossibility.

42. The witness stated that the functions and duties of the South African Police should be as stipulated in the Police Act, i.e. limited to the maintenance of law and order in the context of common-law crimes unrelated to political conflict. He further stated that it would be desirable to evacuate the security forces from strife-torn areas and that the responsibility of combating political violence should be the task of the National Peace-Keeping Force.

43. Politically motivated violence had achieved its peak in the senseless assassination of Chris Hani, the Secretary-General of the South African Communist Party, in April 1993, the most disturbing event at a time when strenuous efforts were being undertaken by all parties concerned to reach a negotiated settlement for a constitutional framework which would allow the deprived majority of South Africa to establish a multiparty democratic government. According to the representative of Lawyers for Human Rights, during the tense and volatile period which followed, it was through the structures of the National Peace Accord, as well as appeals from the leaders of all groups, that violent incidents were prevented during the funeral ceremonies. This was, in part, due to the fact that the National Peace Accord

committees were in a position to establish contact at the local level as well as undertake the task of facilitating and maintaining peace, a role that was vital in the face of the increasing violence. It may be noted that on 14 October 1993, Clive Derby-Lewis, a prominent right-wing politician, and Janusz Walus, a right-wing activist belonging to the Afrikaner Weerstandsbeweging (AWB), were found guilty of murdering Chris Hani on 10 April 1993. A third defendant, Gaye Derby-Lewis, was acquitted.

B. Detention without trial

44. It was reported that under the Internal Security Act, S.29*, 117 people were detained during the first seven months of 1993. According to information received from the Human Rights Commission of South Africa, as at 10 December 1993, 42 of them were still in detention. Furthermore, under S.50 of the Act, which allows for 14 days' preventive detention, 93 detentions were recorded. On the other hand, no detentions were recorded during the first seven months of 1993 under S.31 of the Act. It was further reported that 285 people were detained under the Public Safety Act of 1953 and 712 people were detained without trial. Furthermore, during the first 11 months of the year, 46 magisterial districts were declared "unrest areas" under the Public Safety Act and at the time of drafting this report 18 districts were still affected. It was reported that the Minister of Justice, under discretionary powers granted to him, could declare as "unrest areas" any part of the country faced with violence, thus creating local states of emergency.

45. Under the legislation applicable in the so-called independent homelands, which remains unchanged, 55 detentions were recorded in Bophuthatswana during the first 7 months of the year. The Working Group noted that according to information received from the Human Rights Commission of South Africa, no detentions were recorded in Transkei, Ciskei and Venda.

C. Death in detention and police custody

46. According to information received from the Human Rights Commission of South Africa, no deaths in detention were recorded during the first seven months of 1993. However, as at 10 December 1993, 36 deaths in police custody were recorded. It was also reported that while deaths in detention without trial did not occur during the year, nevertheless reports of torture and assault in detention continued. In that connection, the Working Group noted with interest the establishment in March 1992, under the National Peace Accord, of the Police Board, which was expected to be operational by the end of 1993. The representative of the Human Rights Commission of South Africa further reported that local committees were to conduct announced spot checks on police cells and that, with the agreement of the police, under a "Visitor's Programme" a panel of civilians would be allowed to examine police cells at any time during the day or night in order to interview any prisoner and subsequently report on it. A police register, to be kept at local police

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* It has been agreed by the Multiparty Negotiating Process that section 29 of the Internal Security Act will soon be repealed.

stations, was to be established in order to keep a record of those arrested as well as details of the place where they were being detained. Furthermore, all this information was to be made available to those directly concerned and affected by the arrests.

47. The representative of the Human Rights Commission of South Africa mentioned several inquests into deaths in police custody and referred to cases where, subsequent to the inquiries, members of the SAP were suspended from duty, pending investigations or a decision by the Attorney-General. Decisions by the Attorney-General to prosecute policemen involved in deaths of persons while in police custody were also brought to the attention of the Working Group by the representative of the Human Rights Commission on South Africa.

48. It was reported in the Amnesty International Newsletter of September 1993 that, in a rare move, the Attorney-General of Witwatersrand had announced in July that a police lieutenant was to be charged with the murder of Bethuel Maphumulo, who was killed while in custody in 1990. The decision to prosecute came in the wake of a campaign by the Maphumulo family, lawyers and human rights activists, who had struggled for more than two years to convince the authorities to bring charges against the police officer accused of responsibility for the killing. It was reported that the case was scheduled to be heard by the Supreme Court.

49. According to information received from the Human Rights Commission of South Africa, four deaths in police custody were recorded during the month of September. According to reports published in the newspapers Star, Sowetan and Citizen:

(a) During the first week of the month, Barnard Mahlatse (29) was shot dead in the Wolmaransstad police station in the Western Transvaal. According to the police, Mr. Mahlatse was shot accidentally when a policeman, who had just registered his 9-mm pistol, was holstering the weapon when "a shot rang out". The shot hit Mr. Mahlatse in the forehead. Mr. Mahlatse had gone to the police station to lay a charge against his landlord;

(b) On 6 September, Frans Mohkale (25), who had been arrested for questioning in connection with a murder case, died in the custody of the police at Vanderbijlpark police station. According to the police, Mr. Mokhale was questioned by policemen who then left him alone for a while in an office. When the policemen returned they found Mr. Mokhale, who was handcuffed, "rolling on the ground" and vomiting. A doctor was called but Mr. Mokhale died during the examination. An inquest has been opened;

(c) On 8 September, Eddy Dlamini, who had been arrested on charges of attempted car theft, was found dead in a cell at the Florida police station. According to the police, Mr. Dlamini had tried to escape; the police had shouted warnings and fired warning shots - which he ignored - and had then shot him, wounding him in the buttocks. The police called in a paramedical team which treated him on the spot; he was not hospitalized. Mr. Dlamini was returned to a cell in the police station where he was found dead during a routine check in the early hours of the morning. The police reportedly said that a post-mortem would be held and that it was possible that Mr. Dlamini had died from loss of blood;

(d) On 30 September, an unnamed man, arrested for public drunkenness, died in police custody at the Willem Cruywagen Hospital in Germiston where he had been taken by police after he was reportedly found to be unwell in his cell. An inquest into his death was opened.

D. Political trials

50. According to information received by the Working Group, political trials continued under the Internal Security Act. During the period from January to 10 December 1993, it was reported that 143 trials, involving 1,719 accused, were completed. As of June 1993, 145 persons were convicted, 211 acquitted, 403 had all charges against them withdrawn, and 79 pleaded guilty and were fined; 21 of them absconded and 1 was granted indemnity. The representative of the Human Rights Commission of South Africa further reported that at the end of July 1993, 81 political trials were in progress involving 827 accused. As of 10 December 1993, 69 trials involving 681 accused were still ongoing. It was also reported that political arrests topped the 5,000 mark in 1993, most of them related to the curbing of political expression. Of those arrested, 117 people died and 1,202 people were in the hands of the security forces.

51. A practising advocate from South Africa informed the Working Group that he had defended numerous accused people in the Northern Transvaal whose trials could be regarded as political trials. Many of the accused persons were charged in relation to such activities as a march during the countrywide peaceful demonstrations held after the assassination of Chris Hani, and others were connected with civic associations or peace committees. He said that a number of them had been acquitted or charges against them dropped, and claimed that the people arrested had been selected on the basis of their political beliefs rather than any unlawful actions they might have committed.

E. Political prisoners

52. It was reported by the representative of the Human Rights Commission of South Africa that the "Joint Scrutiny Committee", set up in 1992 for the purposes of identifying prisoners who qualified for release as political prisoners, had the names of 49 persons. The "Committee" had already assessed the cases of 13 of them who were still in prison and 17 cases were still under review. The Human Rights Commission of South Africa considered the remaining 19 to be political prisoners and therefore entitled to be considered for indemnity (see E/CN.4/1993/14, paras. 133-138).

F. Executions

53. The Working Group was informed that no executions had taken place during the period under consideration, although 324 people were known to be on death row, 29 of them sentenced to death in relation to criminal offences, during the first 9 months of 1993. During 1993, 53 death sentences were handed down.

II. BANTUSTANS

54. The Working Group once again wishes to emphasize that under apartheid, as originally conceived, all black South Africans were to lose their

South African citizenship and become instead citizens of the so-called "independent states" within South Africa's borders. Although all substantial ethnic groups of purely African origin in South Africa were eventually allocated a particular homeland, the system was never entirely realized. Many Africans continued to live - legally or illegally - in areas officially designated for whites only; moreover, only four of the homelands (Transkei, Bophuthatswana, Venda and Ciskei, "the TBVC States") ever became nominally independent. The remaining six are known as "self-governing territories" and do not have sovereign status within South African law although they do theoretically have a large measure of legislative and executive autonomy. In practice, there has been little difference, as far as their inhabitants were concerned, between the nominally independent TBVC States and the "self-governing territories". Although the South African Government in 1991 repealed the major legislation implementing apartheid within South Africa, the statutes setting up the homelands remained in force.

55. The reincorporation of the so-called "homelands" into the Republic of South Africa has been one of the most contentious points at the multilateral negotiations for a transition to majority rule which began in 1990. Because it treats them as sovereign States, the South African Government has argued that the reincorporation of some of the so-called "homelands" requires the consent of the governments concerned. In the case of the self-governing territories, the South African Government passed legislation in 1993 which makes provision for the jurisdiction granted to the six "non-independent" homelands to be revoked. Nevertheless, this power is to be exercised only "with the consent or at the request of the government of the self-governing territory concerned".

56. In August 1992, it was reported that the South African Government was planning to give control of an additional 1.2 million hectares of land to the self-governing territories of KwaZulu, QwaQwa and Lebowa (see E/CN.4/1993/14, paras. 164-170). In December 1992, in its third interim report, the Goldstone Commission recommended that there should be a suspension of further transfers of land or police stations to KwaZulu because "to proceed (with land transfers) at the present time, in the opinion of the Commission, could seriously aggravate the violence". Further land would also be offered to KaNgwane, KwaNdebele and Gazankulu. According to the Government's own analysis, more than half of this land is already developed and occupied on a permanent basis. Approximately 600,000 hectares of the land were designated for transfer to joint administration with the government of KwaZulu. According to information received, the Government refused to release details of the exact location of the land affected; this was publicized only after research at the Deeds Office by the Association for Rural Advancement (AFRA), a non-governmental organization involved in development and land issues. The areas affected are spread throughout Natal, and include communities that previously opposed incorporation into the homeland, notably in the Northern Cape and the Western Cape (Rondvlei). There was an immediate outcry at the transfer proposals from a wide variety of organizations, including the ANC, as well as human rights and development groups. (A joint press release condemning the Government's proposal was released on 27 October 1993 by, among others, AFRA, the Black Sash, the Centre for Adult Education of the University of Natal, Pietermaritzburg, Five Freedoms Forum, Human Rights Commission, Lawyers for Human Rights, Legal Resources Centre, Natal Midlands

Rural Development Network Executive, Pietermaritzburg Association for Christian Social Action, the South African Catholic Bishops Conference and South African Council of Churches.

57. The land to be transferred was previously held by the South African Development Trust (SADT), a body established by the Development Trust and Land Act of 1936. Following the repeal of the Development Trust and Land Act by the Abolition of Racially-Based Land Measures Act of 1991, the SADT was abolished on 1 April 1992. The land it held was transferred to the Ministry of Regional and Land Affairs (formerly the Department of Development Aid), which is responsible for the self-governing territories, and it is this land that is now being transferred to homeland control. Although the details of the transfer remain obscure, it was stated by Deputy Minister of Land Affairs Johan Scheepers that the land to be transferred would remain part of South Africa, subject to South African legislation, but that "the rendering of services on the land concerned will be a joint venture". It has not been made clear what exactly this joint administration will entail. According to information received in previous cases where land has remained technically part of South Africa but administration has been exercised by a homeland, there has been no practical difference from complete transfer of ownership.

58. In its 1991 White Paper on Land Reform, the Government of South Africa acknowledged that there was no basis for further incorporation of land into the homelands. During multilateral negotiations in 1992 it was also agreed by all parties, including the governments of the self-governing territories, that there should be a moratorium on further transfers of land. However, the Government described the new transfers as "in accordance with the principles and guidelines contained in the government's White Paper on Land Reform", on the grounds that full ownership was not being transferred to the homelands. The transfer of administrative control was a compromise agreed because the Government had "come under increasing pressure from the six territories to fulfil the old promises of land transfer". On 1 February 1993, Deputy Minister of Land Affairs Johan Scheepers was reported to have said that the Government would not put a moratorium on the land transfers.

59. While the governments of Lebowa and QwaQwa agreed to the transfer of joint administrative control under the scheme proposed by the Government, the KwaZulu government argued that full authority over the land should be transferred to it.

60. In June 1993, two acts (the Regulation of Joint Executive Action regarding Certain Land Act 109/1993 and the Joint Administration of Certain Matters Act 99/1993) were enacted empowering the State President to give effect to agreements for the joint administration of land outside the self-governing territories. In August 1993, South Africa and KwaZulu announced that a compromise had been reached on the land allocated to KwaZulu. The transfers would go ahead, although KwaZulu would not obtain full authority, South Africa retaining the right to control policing and education, and other services being jointly administered. Two highly sensitive areas, Clermont (a township outside Durban that previously fought a long battle against incorporation) and Edendale (an area near Pietermaritzburg that has

been a centre of bitter violence), would be excluded from the transaction. According to information received, no land has yet been transferred under this agreement.

61. In an open letter dated 18 August 1993, addressed to the negotiators at the World Trade Centre, individuals and representatives of 39 organizations stated that they strongly objected to the inclusion of a property clause in the transitional bill of rights, and that property rights should be dealt with by all South Africans after elections. The letter also stated that if existing property rights for existing owners were guaranteed in the Constitution without sufficient provision for land restoration and redistribution, then a land claims court or a land reform policy would be vulnerable to challenge or review, and would enable the white owners to challenge any laws and policies aimed at restitution on the grounds that they conflicted with their constitutional rights. The letter proposed that the question be addressed further to enable all affected parties, and the landless rural people in particular, to have the opportunity to make submissions on the matter.

62. The National Land Committee, to which Association for Rural Advancement is affiliated, has argued for a long time that if existing property rights are retained in the new Constitution, it would enhance the racially discriminatory results of apartheid. (If the Constitution had had clauses protecting rights in the nineteenth century, forced removals and the racial prohibition of rights to own and lease land could never have taken place.)

63. The Technical Committee of the Multiparty Negotiating Forum proposed the following clauses:

1. Every person shall have the right to acquire, hold and dispose of rights in property.

2. Expropriation of property by the State shall be permissible in the public interest and shall be subject to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, and the value of the owner's investment in it and the interests of those affected.

3. Nothing in this section shall preclude measures aimed at restoring rights in land to or compensating persons who have been dispossessed of rights in land as a consequence of any racially discriminatory policy, where such restoration or compensation is feasible.

64. The National Land Committee proposed the following changes:

- Under clause 1 above, the addition "Property rights acquired in terms of or under laws which are or were in contravention of universally accepted human rights standards shall not enjoy this protection".

- Under clause 2 above, the addition of "and available public resources".

65. The following clause was proposed in substitution of the one proposed by the Technical Committee: "Every person who did not receive effective compensation for removal from land when the removal was in pursuant to apartheid policies and practices shall be entitled to the restoration of the land in question. Provided that where restoration is not feasible, such person will be entitled to compensation as set out in clause 2 above."

66. According to information received from AFRA, there are 21 million voters in South Africa, many of whom live in rural areas. It is estimated that up to 10 million people reside in the so-called "homelands" and occupy approximately 70,000 square kilometres of arid and semi-arid (386,000 square kilometres) land which has limited agricultural capacity. It was reported that 15 million black people live in the so-called "homelands" and that 55 per cent of the households are small-scale and consist of, on average, one hectare of land per household, where production is below subsistence level. Thirty per cent of families in the so-called "homelands" are reported to be homeless and between 60 per cent and 80 per cent of people in the so-called "homelands" depend on earnings from labour in industrial or commercial white enterprises in South Africa. According to information received from the same source, as far as the white people in commercial rural areas are concerned, there are about 60,000 family units with an average farm size of about 2,500 hectares where more than 1 million labour tenants work and live.

67. The Working Group supports the following issues which were considered of importance and raised by the Association for Rural Advancement:

(a) Return of title deeds to those who owned land before their forced removal. (The Government of South Africa requires the affected communities to pay back any "compensation" they may have received at the time of their removal before they get back their title deeds);

(b) A speedy process to resolve disputes over specific pieces of land, for example between a community who was removed and wants back their land and the current private owner of that land.

III. FREEDOM OF THE PRESS

68. The Working Group was informed by a representative of the Anti-Censorship Action Group that there was an increase in attacks on journalists and members of the press corps. She referred to the events during the commemorative meetings and marches for the day of mourning of Chris Hani, as well as instances when attempts were made, on other occasions, to report on or photograph crowds looting shops or indulging in arson. She further referred to an attack on a cameraman and a South African Broadcasting Corporation journalist on 23 April 1993, which resulted in the death of the latter. The increase in incidents such as these led to a resolution at the annual congress of the South African Union of Journalists to set up permanent structures with the main political parties to discuss attacks on journalists.

69. The Working Group also noted that according to information received after allegations were made of irresponsible press reporting, the Goldstone Commission had requested the Press Council to investigate the role of the media in the current escalation of violence, especially in respect of incidents such as those which took place during a march in Thokoza which ended in the death of 13 people.

IV. RIGHT TO EDUCATION

70. The representative of the National Children's Rights Committee (NCRC), in the course of her testimony, referred to all the encouraging and positive changes which have taken place and referred especially to the Interim Measure of Local Government Act of 1991, passed to allow local committees to negotiate their own models of non-racial local government until the Constitution was finalized. She also referred to the Child Care Amendment Act of 1991, passed to enable adoptions of children without racial considerations. She further referred to the Education Affairs Amendment Act of 1992, passed to facilitate procedures whereby schools could admit pupils of other races, and to the initiation of procedures to desegregate hospitals and eliminate discrimination in entitlement to pensions, previously based on race. She said that in spite of these legal changes, the situation on the ground in areas like health, education and social welfare had not yet improved because of difficulties associated with availability, affordability and accessibility.

71. Furthermore, the representative of NCRC informed the Working Group that the child population (under 19), in South Africa, in 1991, was recorded as 17,585,922. Children under five years of age, in 1991, made up 36 per cent of the total South African population; only 7 per cent of those under five years of age had access to pre-school education and care. The National Education Policy Investigation on Early Childhood Educare had expressed the need to coordinate education, primary health care, social welfare, and housing and development programmes to meet the needs of children in an integrated way. The witness stated that the report also highlighted "the tension between the need for effective family and community participation in educare provision and the need to promote national unity and to distribute resources to redress the iniquities of apartheid in terms of an overall development plan". She further stated that iniquities in the South African educational system were greatest in respect of educare and basic primary schooling which underpinned inequality of performance. In that connection, she mentioned that the differential treatment in the provision of educational facilities inherited from the apartheid system remained and no financial provision was made for African children of pre-school age. That practice stemmed from a discriminatory way of budgeting in the educational system, which still maintained the structure of apartheid. The witness stressed the importance of establishing a culture of learning and teaching, which had been destroyed. Violence had made access to schools extremely dangerous in affected areas, and those African children who managed to get to schools, spent very little time in formal learning.

72. The same witness also stated (as already indicated by the Group in their previous report, E/CN.4/1993/14, paras. 185-188) that owing to apartheid structures which provided for separate discriminatory educational systems based on race, compulsory education at the primary and secondary school level was not provided for all African children, and it is a discretionary matter

for the different departments, which were governed by their own statutes. She referred to a proposal recently adopted by the Government to introduce compulsory education for at least nine years, for which the State would assume primary responsibility. The National Education Policy Investigation (NEPI 1992) and the African National Congress, among others, had made various proposals for restructuring a phased transition from the current system, which was run under 19 different departments. According to the witness, compulsory primary and junior secondary education would require 125,617 additional teachers and 11,044 additional classrooms, the total cost of which would be more than R2 billion. To implement compulsory education under the Department of Education and in "homeland" schools, an additional 18,059 teachers would be needed. In view of the natural link between educational achievement and early childhood development programmes, increased access to primary education would undoubtedly lead to a greater realization of aspirations for higher education. In that context, the witness expressed the need to support the Transitional Executive Council and encourage it to work closely with democratic structures to achieve acceptable solutions.

V. TRADE UNION RIGHTS

73. It was reported by the representative of the International Labour Organisation that the political changes leading up to the formation of the Transitional Educative Council had had a strong influence on trade union rights and the labour laws in South Africa. Several bodies connected with trade union rights had changed their composition and had become multi-racial forums. The National Manpower Commission had been constituted as a tripartite multiparty body. Although jobs at the higher level were no longer in principle reserved for the whites, the situation of black workers had not changed, owing to the fact that they still did not have access to the training required.

74. The Public Service Labour Relations Act, No. 102 of 1993, which dealt with civil servants, had been passed in May 1993. However, those positive developments have not yet improved the situation of domestic workers and the estimated 1 million farm workers. It was reported that two bills concerning Domestic Workers (Basic Conditions of Employment Bill, (B 128-93 (GA)) and Farm-Workers Proposed amendment of the Basic Conditions of Employment Act, 1993 - Government Act 14678, 8 April 1993) were still pending before Parliament.

75. According to information received, numerous weapons were in the hands of the civilian population. In particular, under the government scheme of State subsidy and lowered age-restrictions for buying arms, white farmers had been heavily armed. That fact might further complicate the social relationship between farmers and their employees. The same witness said that employers and workers as such were not represented in the constitutional negotiations and that could undermine workers' rights.

76. As already mentioned in previous reports of the Working Group, farm workers were totally dependent on the owner of the farm for family accommodation and sometimes for schooling, provided by some farmers. It was reported that that could well prevent the farm workers from organizing themselves.

77. According to recent information received from ILO, there is widespread illiteracy in South Africa. The estimated rate of unemployment was in the region of 46 per cent in 1993. The social protection system was created to support a social and economic system heavily influenced by the system of apartheid, and resulted in gross inequalities. It was stated that there was a need for a fundamental restructuring both in the public and private sector in order to provide social protection in a non-racial system. Reference was made to possibilities of some form of affirmative action.

78. In view of the recent concrete developments in South Africa, ILO was in the process of rescinding its Declaration against Apartheid and was currently looking into ways and means of setting up programmes which would further extend assistance given previously, especially in the field of employment-creation, human resources and development, trade union rights, collective bargaining and the protection of farm workers and domestic workers, in keeping with international labour standards.

VI. CONSTITUTIONAL NEGOTIATIONS

79. On 8 October 1993, the General Assembly decided, without a vote, to lift all economic sanctions it had imposed on South Africa with immediate effect and lift its oil embargo from the date the Transitional Executive Council became operational. The arms embargo imposed by the Security Council still remains in effect. After agreement was reached in early September, during the multilateral talks, on the formation of a transitional executive council, the South African Parliament approved it on 23 September 1993. On 24 September 1993, Mr. Nelson Mandela addressed the General Assembly and asked for the lifting of economic sanctions against South Africa. In a subsequent declaration, the Organization of African Unity (OAU) supported Mr. Mandela's appeal. On 7 December 1993, the Transitional Executive Council became operational.

80. During the mission, in Harara, a representative of the African National Congress who had been closely involved in the multiparty negotiations, after giving a brief history of the constitutional negotiations, said that amongst the seven technical committees set up under the Multiparty Negotiating Forum, the second technical committee dealt with the question of constitutional principles. After rejecting the proposal that there should be a separate Afrikaner homeland, as well as the notion of confederalism, the witness said that it had been agreed as a general principle, that there would be national, regional and local government and that at each level of government there would be democratic representation. In addition, provision had been made for the allocation of exclusive or concurring powers to the centre or to the regions; the question of whether the central government would be given overriding powers would be left for the Constitutional Assembly to decide. In order to avoid a constitutional void, a draft interim constitution was to be drawn up by the second technical committee providing for a national assembly consisting of 400 persons, 200 elected on a national list and 200 elected on a regional list. Provision had also been made for a senate, to be elected indirectly by regional legislatures, which would be elected democratically. The National Assembly and the Senate, sitting jointly, would be the constitution-making body and their decisions would be adopted by a two-thirds majority. The witness further stated that the draft interim constitution provided that,

after the elections of 27 April 1994, the National Assembly and the Senate would constitute the interim government. It also provided that the President would be elected from the party with the greatest number of votes, by a majority of those sitting in the National Assembly and the Senate. Of particular interest was the provision made for the election of a Deputy President, who would be selected from the party that received the second largest number of votes. Parties which received at least 5 per cent of the national vote would be entitled to be represented on the executive. The President, after consultation with leaders of parties which had received at least 5 per cent of the national vote, would appoint the Cabinet. Certain decisions of the President would be made after consultation with the Cabinet. The Cabinet, as a general rule, would take decisions by consensus. Also of particular interest was the provision that when any minister did not agree with a decision of the Cabinet, no impediment would be imposed on referring to it publicly.

81. The representative of the African National Congress also referred to difficulties in reaching agreement over the demands of the regions for powers incorporated in a constitution was to be finalized before the scheduled elections. The whole question was still under discussion; it would be resolved by 12 November 1993. Agreement had been reached on 15 constitutional principles, one of which provided for democratic representation at each level of government. It had been agreed that that principle would not derogate from principle No. 12, which provided that the institution, status and role of traditional leadership according to indigenous law should be recognized and protected in the constitution and should be applied by the courts subject to the provisions on fundamental rights contained in the interim constitution and to legislation specifically dealing therewith. The same witness then addressed the question of national symbols (emblem, flag and coat of arms) and said that it would be necessary to resolve that question because it was proposed that the Government of National Unity would continue for a period of five years.

82. It was further reported that considerable progress had been achieved in the Transitional Executive Council. It would have six subcouncils, which would deal with finance, police and security, foreign affairs, regional government, local government and women. The purpose of the subcouncils, it was reported, was to ensure free and fair elections, and to maintain legislation that would be adopted. They would have the power to demand reports from various government departments. Their decisions would be adopted on the basis of a majority support of 80 per cent. The witness further testified that the subcouncil on police and security forces was of crucial importance and that discussions were continuing in regard to the question of joint control.

83. The representative of the African National Congress continued by saying that it had been agreed that instead of there being a blanket clause which would repudiate any discriminatory or other laws contradictory to the constitution, as suggested by it, such legislation would be identified specifically and then nullified. The witness said that at the time when he was testifying (August 1993), many important constitutional matters were still under discussion.

84. In the view of the Working Group, it would be in the interest of the democratization process, to have mechanisms under the National Defence Force which could control effectively those units of the security forces which often interfere with the political process. In that connection, the International Commission of Jurists, in its report "Voting for peace" (November 1993) has made a specific recommendation that the Internal Stability Unit, the KwaZulu police and other homeland police forces must play no part in policing the election. This supports the view put forward by Lawyers for Human Rights, that the functions and duties of the South African Police (SAP) should be as stipulated in the Police Act and limited to maintenance of law and order in the context of Common Law crimes unrelated to political conflict. The representative of Lawyers for Human Rights stated that the army should not be involved in the internal conflicts during the transitional period. The same witness also said that after the elections had taken place a Truth and Reconciliation Commission should be established to ensure full disclosure of gross human rights violations with emphasis on disclosure, transparency, accountability and reconciliation, and not revenge and retribution.

85. According to information received in early December 1993 from the Permanent Representative of the Government of South Africa* to the Office of the United Nations at Geneva, a bill containing a draft constitution for the transitional period in South Africa, due to last for the five years from 27 April 1994 to 26 April 1999, was endorsed by the Plenary of the Multiparty Negotiating Process on 17/18 November 1993, and would be submitted for adoption by Parliament during its session which started on 22 November 1993.

86. The draft constitution provides inter alia for a Government of National Unity (GNU), three tiers of democratic government and contains a chapter on fundamental rights. A schedule in the bill set up binding and justiciable Constitutional Principles to which a final constitution must adhere. The future Republic of South Africa will be a "constitutional State", with the Constitution for the Transitional Period being the supreme law of the land.

87. In the first democratic elections, on 27 April 1994, all eligible South Africans will vote for a new national government, based on a system of proportional representation. The Constitution for the Transitional Period will be implemented by proclamation in the Government gazette on that day.

88. Article 190 (1) of the draft interim constitution provides for the repeal of the legislation that recognizes the independence of Transkei, Bophutatswana, Ciskei and Venda. It will repeal the Self Governing Territories Constitution Act. This would effectively end the existence of national states such as KwaZulu, Qwa Qua, Lebowa, Gazankulu, KwaNdebele and KaNgwane.

89. Article 190 (1) reads: "The laws mentioned in schedule 7 are hereby repealed to the extent set out in the third column of that schedule". Among

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* Reflected in paragraphs 85-90 of the present document.

the laws listed in Schedule 7 are the following: Joint Executive Authority for KwaZulu and Natal Amendment Act, 1991; Joint Executive Authority for KwaZulu and Natal Act, 1986; Status of Venda Act, 1981, Self-Governing Constitution Act, 1971; Status of Transkei Act, 1976; Status of Bophutatswana Act, 1977; The Bophutatswana Border Extension Act, 1978.

90. The Interim Constitution will not come into force until after the elections. This means that article 190 (1), which repeals the provisions granting independence to the homelands, does not come into force until after 27 April 1994. It also means that the package legislation for the transition process will not come into force in the four independent homelands unless they specifically adopt it; South African law does not apply to them.

91. The Working Group hopes that the four so-called independent "homelands" will adopt the transition process legislation. Transkei and Venda, it would appear, have already announced that they will enact the transitional legislation and make it fully operational in their territories. Bophutatswana and Ciskei, on the other hand, appear to be resistant to the process and have announced that they will not implement the legislation. This problem could prevent an election being held successfully and the Interim Constitution coming into force on 27 April 1994 in those two territories.

92. The position of KwaZulu seems to be different, because it is not a so-called "independent homeland". The transition Acts, once enacted by the South African Parliament, would therefore apply to KwaZulu. But Chief Buthelezi is reported to have called on his followers to prepare for a resistance campaign against the new constitution and the whole transition process.

93. South Africa will be demarcated into nine provinces for electoral purposes: Eastern Transvaal, Northern Transvaal, the Pretoria-Witwatersrand-Vereniging (PWV) area, North West, Orange Free State, Natal, Northern Cape, Western Cape and Eastern Cape.

94. Parliament will consist of a 400-member National Assembly and a 90-member Senate. The National Assembly will be made up of 200 members from the national lists and 200 persons from the regional lists of the various political parties, elected on the basis of proportional representation. The Senate will be made up of 10 persons elected indirectly by each of the nine provincial legislatures.

95. Ordinary laws will be passed by a simple majority in each house; if one house rejects a bill, it must be passed by a majority of the total number of the members of both houses.

96. Bills affecting provincial boundaries or the exercise of powers and functions allocated to provincial governments must be approved by both the National Assembly and the Senate. A bill which affects the exercise of powers or functions of a particular province only must also be approved by a majority of the Senators of that particular province.

97. The head of State will be an Executive President. The first President will be elected by the National Assembly at its first sitting.

98. Provision has also been made for Executive Deputy Presidents from parties that obtain 80 or more seats in the National Assembly. Should no party or only one party hold 80 or more seats in the National Assembly, the party holding the largest number of seats and the party holding the second largest number of seats, shall each be entitled to designate one Executive Deputy President.

99. The multiparty Cabinet will be composed, on the basis of proportional representation, of those parties that obtain 5 per cent or more of the vote in the election. The various portfolios will be allotted by the President.

100. Decisions will be taken by consensus, in keeping with the spirit underlying the concept of a government of national unity, as well as the need for effective government.

101. Each of the nine provinces will have a provincial legislature, elected by proportional representation from the regional party lists of the various political parties.

102. The number of seats in a provincial legislature will be determined by dividing the total number of votes cast in a province by 50,000. However, provincial legislatures will not have fewer than 30 or more than 100 seats.

103. The provincial legislatures will pass legislation by a simple majority. These legislatures will have concurrent powers with the national government to make laws on issues set out in a schedule of the constitution, which include the following: local government, agriculture, police, environment, provincial planning and development, urban and rural development, provincial language policy, housing, public transport, health and welfare, education at the primary and secondary levels, cultural matters, traditional authorities, tourism, public transport, roads, traffic control, trade and industry, nature conservation, racing and betting casinos and the public media within the province.

104. Each province will have a provincial executive council, consisting of a premier and 10 executive members, to administer provincial departments and determine policy. A party must obtain at least 10 per cent of the seats in the provincial legislature to qualify for an executive portfolio. The multiparty provincial executive council will take decisions by consensus.

105. Shortly after the elections of 27 April 1994, each provisional legislature will be entitled to adopt a constitution for the province, as long as it is consistent with the Constitutional Principles and with the national constitution.

106. The draft interim constitution makes provision for autonomous three-tier government, central regional and municipal.

107. Traditional leaders will be included ex officio at the municipal government level. A House of Traditional Leaders will be established in each province. A Council of Traditional Leaders, composed of not more than 20 representatives, will be established at the national level.

108. The draft interim constitution provides that any person who, or any community which, at any time after a date fixed by an Act of Parliament, which date shall not be earlier than 19 June 1913, was dispossessed of a right to land under, or for the purpose of furthering the object of, any law which would have been inconsistent with the prohibition of racial discrimination contained in the draft interim constitution, had that provision been in operation at the time of such dispossession, shall be entitled to claim restitution in a court of law in respect of such right from the State.

109. A commission, established by legislation, will investigate the merits of any claims, mediate and settle disputes arising from such claims and draw up reports on unsettled claims for submission as evidence to a court of law and present any other relevant evidence to the court.

110. The Constitutional Court will have the final jurisdiction on matters relating to the interpretation, protection and enforcement of the constitution at all levels of government. Disputes between the various levels of government will, therefore, be settled by the Constitutional Court. The Constitutional Court will also certify that any amendments made to the Interim Constitution, as well as the Final Constitution, comply with the Constitutional Principles. The Constitutional Court must also protect the fundamental rights and freedoms contained in the constitution. These rights can only be suspended under a state of emergency. A decision by the Constitutional Court will be final and binding.

111. The existing two-tier courts structure, will remain largely intact during the transitional period. (One tier is the Supreme Court, which consists of the Appellate Division and various provincial and local divisions; the other is the lower courts, which consist of regional and district magistrate's courts and of chiefs and headmen.)

112. The elected Constitutional Assembly, i.e. the National Assembly and Senate sitting in joint session, must draft a final constitution for South Africa. In doing so, it will be bound by the justiciable Constitutional Principles adopted by the Plenary of the Multiparty Negotiating Process on 17/18 November 1993. The Principles provide for multiparty democracy, three tiers of government and the recognition of civil liberties.

113. A final constitution, drafted by the elected representatives of the people of South Africa, will be adopted by two thirds of the members of the Constitutional Assembly within two years of its first session. If the necessary two-thirds majority is not obtained in the Constitutional Assembly, certain deadlock-breaking mechanisms will come into play, culminating in the adoption of the final constitution by a 60 per cent majority in a referendum. Once the final constitution has been adopted by the Constitutional Assembly, in accordance with the Constitutional Principles, it will be implemented.

114. The multiparty Cabinet and Government of National Unity will continue to function until 27 April 1999, when the next democratic election will be held in South Africa. Should the multiparty Cabinet at any time lose the confidence of Parliament however, an election could be held at an earlier date.

VII. ELECTORAL PROCESS

115. The Transitional Executive Council has executive and other powers conferred on it. The objectives of the Council will be to facilitate and promote, in conjunction with all legislative and executive structures at all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by:

(a) Creating and promoting a climate for free political participation by endeavouring to:

(i) Eliminate any impediments to legitimate political activities;

(ii) Eliminate any form of intimidation which has a bearing on the said transition;

(iii) Ensure that all political parties are free to canvas support from voters and to organize and hold meetings, and have access to all voters for those purposes;

(iv) Ensure the full participation of women in the transitional and electoral structures and processes; and

(v) Ensure that no Government or administration exercises any of its powers in such a way as to advantage or prejudice any political party;

(b) Create and promote conditions conducive to the holding of free and fair elections;

(c) Exercise such powers and perform such duties as may be conferred upon or assigned to it by any other law.

116. The proposed electoral law of South Africa, in chapter I, defines the scope of the law as including the Republic of Transkei, Bophutatswana, Venda and Ciskei (the so-called independent "homelands"). Accordingly, the Independent Electoral Commission will be charged with facilitating the participation of eligible voters in each of these areas.

117. According to information received by the Working Group, voter identity cards would be adequate proof for the purposes of voting as no registration is envisaged by the South African authorities. The photographs required for the identity card would be provided free of charge in order to make voting possible for all those who are eligible. The question of locating voting booths is still under consideration especially in regard to access for farm workers living on large farms and those living in remote rural areas and in the so-called "homelands" of Bophutatswana and Ciskei.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

118. The Working Group expresses its profound regrets and deplores the fact that the Government of South Africa has once again refused authorization to the Ad Hoc Working Group of Experts to visit that country in order to evaluate the prevailing human rights situation, in conformity with Commission on Human Rights resolution 1993/9. The Group is of the opinion that a visit to South Africa in the course of 1994 is of the utmost importance.

119. The right to life continues to be violated with impunity. It was reported that as at 10 December 1993, 4,047 deaths arising out of political violence had occurred, for which the security forces were clearly directly or indirectly responsible.

120. Endemic violence constitutes a key element of the South African crisis. According to the testimonies submitted to the Working Group, it is mainly due to political rivalries and the so-called "third force", a clear reference to the role of the police and security forces. This violence in South Africa has been maintained in order to jeopardize the democratic process in the country. Adequate intervention by the police has been lacking. This situation will inevitably reduce the possibilities for a peaceful and democratic solution to the political crisis and the total elimination of the system of apartheid.

121. The rise in the death-toll following the decision to hold general elections, on the basis of universal suffrage, on 27 April 1994, could be considered as the result of action by certain right-wing forces to frustrate the democratic process.

122. Detentions without trial under the Internal Security Act S.50 and under the Unrest Areas Regulations continue to violate individual freedoms in South Africa and should therefore be abolished. The Ad Hoc Working Group is also concerned about detentions without trial in the so-called "homelands", particularly in Bophutatswana.

123. During the first 11 months of 1993, 36 deaths in police custody were recorded. The Ad Hoc Working Group of Experts is seriously concerned that deaths in police custody are still taking place in South Africa. The Working Group urges the Government of South Africa to ensure that all necessary measures are taken to put a stop to this gross violation of the right to life. In this connection the Working Group hopes that the Police Board under the National Peace Accord (see para. 46), which may be operational by the end of 1993, will have a positive role to play.

124. The failure of the South African authorities to ensure the security of all citizens on an equal footing has resulted in an enormous amount of weaponry in private hands acquired for the sake of self-defence.

125. The system of homelands, which is widely condemned by the international community, is still in force despite the repeal in 1991 of major apartheid laws. It appears, from the steps recently taken to incorporate more land into the so-called "homelands", that the South African Government has not taken the

necessary measures to abolish the Bantustan system. The interim constitution appears to provide an enabling section for abolishment, but it remains to be seen if it goes far enough. The attitude of the South African authorities that the 1993 law providing for possible revocation of homeland status is conditional upon the consent or request of the government of the so-called "homelands" concerned is curious. The situation regarding the ability of the population of Bophutatswana to vote in the elections scheduled for 27 April 1994 is, of particular concern to the Working Group.

126. The Working Group considers that the governments of the so-called "homelands" of Bophutatswana and Ciskei, the Inkatha Freedom Party of Chief Buthelezi in KwaZulu and their right-wing partners in the Freedom Alliance continue to be a major threat to the transitional process and the elections scheduled for 27 April 1994.

127. The Working Group considers that the whole issue of the freedom of the press as well as the question of responsible reporting, needs careful attention. Objective assessment and the right of the people to information are questions of particular importance when proposals regarding freedom of expression are considered in the final constitution.

128. The system of apartheid did not facilitate the keeping of proper statistics as far as the black population of South Africa was concerned. Although more recent figures are not available, the number of children in South Africa in 1991 was estimated to be 17,585,922. Compulsory education is still not available to black children. Children of different races are still treated differently and their education is administered by separate departments.

129. While noting the measures already taken to introduce reforms relating to the rights of workers in the public service sector, the Working Group notes with concern the fact that such measures do not sufficiently conform to the international labour standards governing the tripartite partners all over the world.

130. Despite spiralling violence, the political atmosphere improved after the installation of the Transitional Executive Council which was established as a result of a previous accord fixing elections for 27 April 1994. However, the Working Group notes with concern the political intolerance which continues to result in violence and death.

B. Recommendations

131. The new South Africa will inherit the Government institutions that were shaped in apartheid philosophy and politics. The new government therefore faces a tremendous challenge. Decisive measures need to be taken to guarantee the security of all citizens without the discrimination which existed before.

132. The Working Group welcomes the positive and constructive agreements reached by the Multi-party Negotiating Process in South Africa, and notes that the interim constitution has taken cognizance of the large number of international instruments in respect of human rights. The Group notes that a

separate Constitutional Court has been created under the interim constitution. Furthermore, a mechanism headed by a Public Protector will also be set up with duties and responsibilities which will correspond to those of an Ombudsman. The Working Group invites the new Government of South Africa to adopt and ratify, in addition to those recently signed, some of the more important international covenants, including the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

133. The Working Group requests the Commission on Human Rights to invite the Government, together with the Transitional Executive Council, to create a truly independent and impartial jucidiary and a police force which would serve the whole population without any discrimination. It is of particular importance to develop a new police force which would be perceived by the majority black population as friends of the community and not the instrument of oppression that the SAP has been considered to be. New training programmes to develop this new police culture must therefore be implemented with immediate effect.

134. Attempts should be made to educate members of the security forces through retraining of the security personnel in accordance with international standards. Right-wing tendencies of some members of the police and army affecting their official activities must be investigated and, where proven, the individuals concerned retired forthwith. With the assumption of responsibility to guarantee public safety without discrimination, it will be necessary for the Government and the Transitional Executive Council to take firm measures to have all weapons currently in private hands surrendered and seized if necessary.

135. Special efforts must be made to encourage competent black people to serve as members of the judiciary and as advocates.

136. The Working Group disapproves of the wide discretionary powers bestowed on the Minister of Justice, which permits the declaration of "unrest areas" and thus creates a situation analogous to that under the declaration of an emergency, as far as that particular locality is concerned.

137. The Ad Hoc Working Group recommends that S.50 of the Internal Security Act and other remaining repressive regulations, such as those under the Public Safety Act of 1953, should be abolished and that similar regulations applicable in the so-called "homelands" should simultaneously be scrapped.

138. A general unconditional amnesty should be given for all sentences arising out of anti-apartheid activities which are regarded as politically motivated.

139. It is recommended that the death penalty should be immediately abolished and the sentences of all prisoners on death row should be replaced by other forms of punishment.

140. The Bantustan system which was established unilaterally by the South African Government should be speedily and unconditionally abolished. Consent of the so-called "homelands" amounts to a political manoeuvre as a delaying tactic in this context and would be unacceptable.

141. While the recently adopted proposal to introduce nine years' compulsory education is laudable, urgent and deliberate measures to provide the necessary human and material resources are required. The international community is invited to assist in this regard.

142. It is recommended that ILO be invited to advise on changes in the labour law to be introduced in order to comply with international labour standards.

143. During the post-election transitional period of the Multi-Party Government of Unity, the new South Africa will be faced with the problems inherited under the apartheid system. This period will see many tensions, painful accommodation to new laws and realities and different obstacles to the promotion and protection of individual rights and freedoms. The Working Group is particularly aware of the enormity of that task and is especially concerned about violations of human rights which may persist. Consistent monitoring and reporting, the experience of the Group, access to information through the liberation movements and NGOs will facilitate the continuation of further monitoring of human rights in the period following elections for the purposes of reporting to the Commission.

144. In the second year of the current mandate of the Working Group (1994-1995), it will concentrate on the situation of human rights in South Africa. The Group will endeavour, in particular, to try and develop the different ways in which it could assist the new South Africa, in coordination with all mechanisms of the United Nations including any advisory services and technical assistance that could be made available by the Centre for Human Rights, especially in cooperation with the local NGOs. In this connection, the Working Group notes that the international community also has a vital role to play at this critical juncture in the life of the new South Africa.